IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 5-9-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.22618 of 2007

and

MP No.1 of 2007

K.Sundarasanam .. Petitioner

vs

1.The District Revenue Officer
(Stamps), District Collectorate
32, Rajaji Road, Chennai 600 001.

2.The Special Tahsildar
(Stamps), Chennai 600 001.

3.The Sub Registrar
Alanthur,
Chengalpet District .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order dated 28.4.2007 made in Tha.Ka.No.2204/07/A5/200/Ki.Pa.43 passed by the 2nd respondent herein, quash the same and consequently direct the 3rd respondent herein to release the document No.1353 of 2007 to the petitioner herein.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.I.Paranthaman
Additional Government
Pleader

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ORDER

Challenging an order of the second respondent dated 28.4.2007, this writ petition has been brought forth seeking a writ of certiorarified mandamus to quash the same and also to issue a direction to the third respondent to release the document No.1353 of 2007.

2.Affidavit in support of the petition is perused. The Court heard the learned Counsel on either side.

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3.This Court is of the considered opinion that an order could be passed in the following manner.

4.Admittedly, a suit in O.S.No.274/80 before the Subordinate Judge, Chengalpet, was filed by the predecessor of the petitioner herein against one Thandavarayanaicker for the relief of specific performance on the strength of a sale agreement dated 6.3.1971, in respect of an immovable property having an extent of 73 cents in Survey No.31, Adhambakkam Village, Saidapet Taluk. The consideration found in the said agreement, was Rs.26,240/-, and the suit was decreed after contest, in the year 1982. Thereafter, the first appeal was preferred. Pending the same, the wife of the owner of the property was added as party, and on enquiry, the first appeal was dismissed. Thus, the original decree for specific performance granted by the trial Court, became final, and it was not further appealed against. Pursuant to the decree dated 27.3.1982, in O.S.No.274/80 and subsequently affirmed by the appellate forum, the sale deed was to be registered. Accordingly, the sale deed was placed before the third respondent noting the value as Rs.26,240/-, and the stamp duty has been calculated at Rs.2,104/- and was also paid. The same has been registered by the third respondent. While the matter stood thus, the second respondent issued a notice to the petitioner stating that there is a deficit stamp duty of Rs.15,24,240/-. Hence, the petitioner by compelled circumstances, has brought forth this writ petition before this Court.

5.In support of the writ petition, the learned Counsel for the petitioner would submit that it is not a fit case where Sec.47-A of the Indian Stamp Act could be invoked; that apart from that, when there was a decree for specific performance on the strength of a written agreement for sale, and a particular sale consideration has been found, there is no question of any suppression of fact in respect of the market value; that the action of the second respondent is not only contravening the provisions of the Indian Stamp Act, but also against the settled principles of law by the Court, and hence, the notice has got to be struck down and the document be released.

6.The Court heard the learned Additional Government Pleader on the above contentions.

7.After careful consideration of the rival submissions made, this Court is of the considered opinion that the impugned notice has got to be quashed for the simple reason that there was a suit for specific performance on the strength of the agreement for sale wherein the value of the property was found to be Rs.26,240/-. After the decree was passed, an appeal was also preferred, and the plaintiff became successful in the appellate forum. It is also pertinent to point out that on the basis of that value, the sale deed was prepared and placed before the authority for registration. Actually, it has been registered. Now, by the impugned notice, a demand was made alleging that there is a deficit stamp duty of Rs.15,24,240/- which, in the opinion of this

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Court, cannot be done for two reasons. Firstly, in order to invoke Sec.47-A of the Indian Stamp Act, there should be reason for the department to believe that the market value has not been properly set forth in the document presented for registration. In the instant case, there was a suit for specific performance on the strength of the agreement for sale, and the sale consideration was found as Rs.26,240/-. A decree has also been granted. Under the circumstances, there is no question of suppression of any fact, or there is nothing to infer contra. Secondly, it is well settled position of law that in a given case where a suit has been filed for specific performance and a decree has been granted wherein in respect of the particular value, the sale deed has got to be executed, there is nothing to infer anything contrary to the same. Under the circumstances, the impugned notice has got to be quashed. Accordingly, it is quashed, and a direction is issued to the third respondent to release the said document forthwith.

8.In the result, this writ petition is allowed. No costs. Consequently, connected MP is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

To:

1.The District Revenue Officer
(Stamps), District Collectorate
32, Rajaji Road, Chennai 600 001.

2.The Special Tahsildar
(Stamps), Chennai 600 001.

3.The Sub Registrar
Alanthur,
Chengalpet District

1 cc to M/s. N. Manokaran, Advocate, SR. 55521
1 cc to Government Pleader, SR. 55539

WP No.22618 of 2007

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